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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS, INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Note verbale dated 17 September 1996 from the Permanent Mission of Egypt to the United Nations addressed to the Committee against Torture

The Permanent Mission of the Arab Republic of Egypt to the United Nations presents its compliments to the Secretariat of the United Nations in New York and, through the Secretariat, to the Committee against Torture, and with reference to the note dated 8 May 1996 circulated by the Secretary-General concerning the summary account of the results of the proceedings relating to the inquiry on Egypt that the Committee, at its 256th closed meeting, on 7 May 1996 in Geneva, decided to include in its annual report to the States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the General Assembly at its fifty-first session, has the honour to enclose herewith the remarks and clarifications of the Government of Egypt (in Arabic, English and French) in this regard; and, with reference to this Mission's note dated 20 July 1996 requesting that the remarks of the Egyptian Government be circulated to all States parties to the Convention against Torture, has the further honour to request that these remarks (see annex) be issued as an official document of the fifty-first session of the General Assembly, under agenda item 110 (b).

ANNEX

[Original: Arabic, English and French]

Observations and clarifications of the Egyptian Government concerning the summary account of the results of the proceedings relating to the inquiry of the Committee against Torture on Egypt which the Committee decided at its 256th (closed) meeting on 7 May 1996, to include in its annual report to the States parties and to the General Assembly at its fifty-first session' notwithstanding the objection of the Egyptian Government

1. The Egyptian Government reaffirms its determination to comply with its treaty obligations emanating from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, the Egyptian authorities, as recognized by the Committee in its conclusions and recommendations, have cooperated with the Committee in a positive and constructive manner and have submitted written and oral responses to the questions of the members of the Committee.

2. The Egyptian authorities have exercised care in replying to most of the allegations included in the reports of the Special Rapporteurs, despite the inaccurate and insufficient nature of the information contained in these reports, as pointed out by the Egyptian authorities in their consecutive replies. Moreover, the said authorities have also followed up other cases brought to its attention with a view to informing the Committee of the legal action taken in regard to them.

3. Egypt's abstention from issuing a declaration with respect to article 22 of the Convention against Torture would have entitled it not to comment on those allegations derived by the two experts from sources other than those emanating from the Special Rapporteur on torture. However, on the basis of "bona fide", the Egyptian Government replied to the questions directed to it, notwithstanding the fact that this should not have been interpreted as a licence to the Committee to draw conclusions based on information derived from such sources.

4. While affirming its commitment to the provisions of article 2, paragraph 2, of the Convention concerning the inadmissibility of invoking any exceptional circumstances whatsoever as a justification for torture, the Egyptian Government totally rejects the use of individual allegations, the credibility of which has not been categorically established in a legal manner, to hastily accuse a State party of the systematic practice of torture on its territory, particularly in the absence of objective explanations of that concept.

5. Most of the allegations concerning torture in Egypt relates to individuals who have been accused or convicted of acts of terrorism. Such individuals have alleged, or have had other persons or non-governmental organizations allege on their behalf, that they were subjected to torture as a pretext to avoid conviction.

6. The Egyptian Government wishes to affirm that it is confronting crimes of terrorism with due regard to legitimacy and the rule of law, within a framework of integrated policies aimed at combating this phenomenon through socio-economic development, public awareness and compliance with the law.

7. The Egyptian Government confirms that it remains committed to the implementation of the provisions of the Convention despite the crimes of terrorism, which Egypt witnessed, aimed at overthrowing the democratic system. Such crimes have threatened freedom of opinion, thought and faith and have violated the rights of citizens, and in particular their right to life, in addition to having been directed against the efforts of the Egyptian Government to promote the principle of constitutional legitimacy and the rule of law.

8. While considering the report of the two experts designated by the Committee against Torture to undertake the confidential inquiry, the Committee should have taken the following into consideration:

(a) The care exercised by the Egyptian legislature in providing for an important safeguard by stipulating that criminal or civil proceedings arising from crimes of torture are not statute-barred, thereby ensuring that the guilty parties do not escape punishment and that compensation is paid to the injured parties;

(b) The strong legislative and judicial base that Egypt enjoys, as acknowledged by the Committee, which acts as a deterrent and punishes anyone found guilty of committing the crime of torture. The two experts have already been provided with comprehensive statistics concerning cases in which custodial sentences have been handed down against offenders or in which compensation has been awarded to the victims;

(c) The fact that those violations constitute exceptional individual cases which the two branches of the judicial authority (the Department of Public Prosecutions and the judiciary) are investigating with a view to the handing down of legal judgements therein;

(d) The reason for the absence of elaborate publication concerning investigation proceedings in cases of torture, which is to ensure that justice be done in the face of the terrorists' expected targeting, for assassination or threats, of persons involved in investigations or trials during the examination stage and before sentencing;

(e) The Egyptian Government did not challenge, at any stage of its dialogue with the Committee, the request by its two experts to visit Egypt. However, it has always affirmed the need to discuss the framework within which the visit might take place in the light of a clear understanding of the articles of the Convention, and as one of the important considerations which would enable the Government to take a decision in this regard;

(f) Moreover, the dialogue between the two experts and the Egyptian Government was confined to the transmission of a few questions in 1993, to which the Government replied. The State party was not subsequently confronted with any inquiries or allegations (contrary to the Committee's resolution adopted on

18 November 1993), while the two experts continued to draw and rely on information that they presumed to be true without soliciting comments or observations from the State party and without even requesting their informants to provide them with copies of the full replies that they had received from the State party. Such a course of action inevitably leads to an incomplete picture of the case at issue and raises doubts about the accuracy of the conclusions reached and the procedures followed;

(g) Egypt's eagerness to continue the dialogue with the two experts of the Committee prompted it to propose that the authorities concerned send a delegation to meet with them, and it immediately welcomed their acceptance of that offer. The Egyptian delegation provided further details and statistics confirming that the rule of law in Egypt was respected, that persons found guilty of committing the crime of torture were punished and that all State institutions were committed to the application and implementation of the national legislation. Such details provided covered court judgements imposing penalties, awarding compensation or ordering a search of places of detention. However, the two experts made no mention of that information in their report, nor did they use it as a basis when drawing their conclusions, thereby committing a breach of procedure, which must therefore be redressed.

9. Within the framework of its endeavours to keep pace with the international human rights movement, the Egyptian Government wishes to state the following:

(a) Under the Egyptian legal system, the Department of Public Prosecutions and the examining magistrates are the bodies empowered to conduct investigations and institute proceedings. The said Department has the authority to file complaints, prosecute and refer for trial. Its members, headed by the Attorney-General, therefore enjoy judicial immunity and independence in conformity with the United Nations principles regarding the independence of the judiciary;

(b) The Department of Public Prosecutions has instituted a specialized Office on Human Rights issues headed by the Assistant Attorney-General. The said Office was in a position to take action in numerous cases in question, as reflected in the replies sent to the Special Rapporteur on torture towards the end of 1994;

(c) The Department of Public Prosecutions is taking the measures necessary to strengthen and develop the Office by increasing the number of its staff, providing it with an adequate number of highly qualified and experienced personnel to ensure the rapid performance of the administrative work concerning current cases in question being handled by the Office, and providing it with the modern technology in order to facilitate the collection and publication of statistics required for the serious monitoring of those cases. The said Office has been granted central jurisdiction to take action in cases;

(d) A specialized section has been also established at the said Human Rights Office to investigate reports of torture with the support of an adequate number of full-time members of the Department of Public Prosecutions. In addition to investigating reports, this section monitors criminal cases in which defendants are acquitted on the ground of their subjection to torture. The section supervises also the strict enforcement of the legal and procedural

provisions concerning cases of torture, particularly in regard to the conditions governing on-site inquiries, the assignment of forensic-medicine examiners, the inspection of prisons and all types of places of detention. These procedures confirm the information requested by the two experts of the Committee against Torture in their conclusions;

(e) The Police Academy exercises care in developing its curricula in a manner consistent with international standards, particularly in the field of human rights. In collaboration with the Centre for Human Rights in Geneva, it has organized two training courses for officers and instructors. The Centre has commended the standard of the participants and the success of the two courses. The Police Academy also sends groups of students on training visits to other human rights centres.

10. The two experts designated by the Committee against Torture to undertake the confidential inquiry drew hasty conclusions that were not based on solid information, hence not reflecting the objective facts, since they failed to take into account the viewpoints of all the parties concerning many of the allegations transmitted, allegations which were founded neither in fact nor in law. Moreover, they failed to complete the procedures laid down in article 20 of the Convention and the Committee's resolution adopted on 18 November 1993 as regards their duty to continue requesting information from the State party.

11. The raison d'être of the opposition by the Egyptian Government to the stand of the Committee regarding the inclusion of the summary account of the results of the proceedings relating to the confidential inquiry on Egypt in the annual report of the Committee to the General Assembly at its fifty-first session can be summarized as follows:

(a) The deliberations concerning Egypt were characterized by a number of substantive and procedural anomalies which were described in detail in the Government's reply dated 30 January 1995; thus the outcome of those deliberations was incomplete and should be reviewed in a proper manner in order to be redressed;

(b) The provisions of article 20, paragraph 5, of the Convention stipulate two basic conditions for the Committee's publication of a summary account of the results of the proceedings in its annual report. The first condition is that the proceedings must have been completed, and the second condition is that such publication may be effected only after consultations with the State party concerned. The Egyptian Government believes that the proceedings are still incomplete and wishes to draw attention to the fact that consultations are not meant to be a mere notification to the State party of the Committee's intention to publish such an account, as has happened in the case of Egypt;

(c) The wisdom behind the stipulation of these two essential conditions in article 20, paragraph 5, of the Convention stems from an acute awareness of the principle of the sovereignty of the State and the need to establish a delicate balance between this principle and the measures that the Committee can take. Accordingly, the Egyptian Government has the firm conviction that the fact that the Committee sought the Government's opinion concerning publication does not entitle the Committee to take a unilateral decision in this regard before

discussing the arguments, the legal justifications and the conditions of appropriateness to which the Egyptian Government has already referred in its dialogue with the Committee, to which the Committee has not yet responded. Any assertion to the contrary would place consultation and mere notification on an equal footing, confusing both of them, and would run counter to the letter and spirit of the Convention;

(d) It is noteworthy that, in the absence of clearly defined objective criteria concerning cases which the Committee may decide to include in its summary, publication should be restricted to exceptional situations, such as cases in which a State party might refuse to reply to the Committee's inquiries, to provide it with the information and details that it requires or to cooperate with it, and in cases where there is coherent legal evidence that torture is being practised systematically in that State party. Any of such examples does not definitely apply to the case of Egypt.

12. The Egyptian Government had hoped that the Committee would have not taken a hasty decision on this matter until it had first verified the allegations that some circles were eager to transmit to the two experts of the Committee. Egypt has never been a State in which torture was an institutionalized or a systematic practice, as some wish to portray it without objective foundation. The question is limited to a small number of individual and isolated cases in which the offenders are held accountable and punished, in case the investigation and the judicial verdict prove it, in the light of the State's desire to ensure the enforcement of the law while showing no indulgence towards offenders of the crime of torture, as reflected in the detailed replies of the Egyptian authorities to the Committee.

13. In this regard, the Egyptian Government wishes to reaffirm that it fully respects and takes care to fulfil its obligations under the Constitution, its national legislation and the Convention against Torture, not solely as a legal obligation but also in view of its firm belief that the rule of law is the basis of democracy, without which the Egyptian people would be unable to achieve the progress and advancement to which they aspire.

Notes

* Official Records of the General Assembly, Fifty-first Session, Supplement No. 44 (A/51/44), chap. V, sect. B.